

**North Dakota Department of Transportation
AGREEMENT FOR ACCESS TO
DRIVERS LICENSE AND MOTOR VEHICLE DEMOGRAPHIC DATA**

**NDDOT
ORIGINAL**

This Agreement is between the State of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota, 58505-0700, and Immigration and Customs Enforcement, hereinafter referred to as the requesting entity, whose address is 1209 North 47th Street, Grand Forks, North Dakota 58203.

This contract shall be effective when signed by all parties and shall terminate on December 31, 2011.

WHEREAS, the requesting entity has requested access to NDDOT Drivers License and Motor Vehicle demographic data (NDDOT demographic data), for identity and address verification, maintained electronically by the NDDOT.

NOW THEREFORE, the parties agree that access to the NDDOT demographic data is provided for the requesting entity's official use only. Access to driver images will only be provided after review and independent approval by NDDOT personnel. No copy or facsimile of the NDDOT demographic data may be provided by the requesting entity to any other entity, including the driver, courts, or other law enforcement agencies, except as might be allowed under state or federal law. Any misuse of the access to NDDOT demographic data will result in the immediate revocation of security access.

The requesting entity will provide NDDOT with:

1. The name of the primary administrator with responsibility to oversee access under this agreement; and
2. A listing of all personnel who are authorized to access the NDDOT demographic data.

Authorization to access NDDOT demographic data will only be granted after the requesting entity has adequately investigated the background of all personnel given access. The requesting entity will immediately notify NDDOT of changes in personnel who have been granted access so that security can be removed. NDDOT reserves the right to refuse access to anyone.

The requesting entity agrees to comply with North Dakota Century Code Chapter 39-33, Driver and Motor Vehicle Record Privacy and the Drivers Privacy Protection Act (P.L. 103-322), and all other provisions of federal and state law in connection with the activities contemplated under this Agreement.

The requesting entity and NDDOT agree that all costs for access will be the responsibility of the requesting entity.

Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this contract shall be governed by and construed in accordance with

applicable Federal Law and the laws of the state of North Dakota, at the time this contract was executed. All disputes arising from this agreement shall be brought in the South Central District Court of the state of North Dakota.

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever, except by written instrument signed by the parties.

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This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' notice, in writing, and delivered by certified mail or in person.

In addition, NDDOT may terminate this contract effective upon delivery of written notice to the requesting entity, or at such later date as may be established by NDDOT, under any of the following conditions:

1. If NDDOT funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified unilaterally to accommodate a reduction in funds.
2. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
3. If any license or certificate required by law or regulation to be held by the requesting entity provide the services required by the contract is for any reason denied, revoked, or not renewed.

Any such termination of this contract under (i), (ii), or (iii), above, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

NDDOT, by written notice to the requesting entity, may terminate the whole or any part of this agreement:

1. If the requesting entity fails to provide services called for by this contract within the time specified herein or any extension thereof; or
2. If the requesting entity fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from NDDOT, fails to correct such failures within ten days or such longer period as NDDOT may authorize.

NDDOT may temporarily suspend access if, for any reason, NDDOT's computer resources are not sufficient to accommodate NDDOT's needs and the requesting entity's requests.

The Risk Management Appendix, attached, is hereby incorporated into and made a part of this agreement.

This agreement constitutes the entire agreement between the parties. No waiver consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no

understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The requesting entity, by the signature below of its authorized representative, hereby acknowledges that the requesting entity has read this agreement, understands it, and agrees to be bound by its terms and conditions.

EXECUTED the date last below signed.

WITNESS:

Edward L. Pollock

NAME (TYPE OR PRINT)

[Signature]

SIGNATURE

To be signed by Owner; Partner; Corp. Pres., Vice Pres., or other authorized Corp. Officer. (If signed by other authorized Corp. Officer, please attach copy of Power of Attorney or other documentation showing authority to sign.)

WITNESS

Jean Monroe

NAME (TYPE OR PRINT)

Jean Monroe

SIGNATURE

APPROVED as to substance by:

Glenn E. Jackson

MOTOR VEHICLE DIVISION DIRECTOR (TYPE OR PRINT)

[Signature]

SIGNATURE

DATE

2/12/09

NDDOT
ORIGINAL

REQUESTING ENTITY:

Claude P. Arnold

NAME (TYPE OR PRINT)

Claude Arnold

SIGNATURE

Special Agent in Charge, ICE

TITLE

DATE

03/23/09

NORTH DAKOTA

DEPARTMENT OF TRANSPORTATION

Francis G. Ziegler

DIRECTOR (TYPE OR PRINT)

[Signature]

SIGNATURE

DATE

4/11/09

APPROVED as to substance by:

Glenn E. Jackson

DL&TS DIVISION DIRECTOR (TYPE OR PRINT)

[Signature]

SIGNATURE

DATE

2/12/09

APPROVED as to execution this
1st day of April 20 09
ATTORNEY GENERAL
By Glenn E. Jackson
SPECIAL ASST. ATTORNEY GENERAL

BY

Risk Management Appendix

Routine* Electronic Data Transfer Agreements with Sovereign Entities and Political Subdivisions of the State of North Dakota:

Parties: **State** – State of North Dakota, its agencies, officers and employees

Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees

Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability** insurance – minimum limits of liability required of the Governmental Entity are **\$250,000 per person** and **\$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person** and **\$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, its agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; and 2) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability coverage, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.